

## Senate File 239 - Introduced

SENATE FILE 239

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### A BILL FOR

1 An Act creating the penalty of death for the commission of the  
2 multiple offense of murder in the first degree, kidnapping,  
3 and sexual abuse against the same minor, providing a  
4 penalty, and including effective date and applicability  
5 provisions.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13B.4, Code 2015, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 6A. The state public defender shall perform  
4 all of the following duties with respect to the appointment of  
5 counsel for indigent persons in cases in which a sentence of  
6 death may be or is to be imposed:

7 a. Provide or contract with attorneys for appointment as  
8 lead counsel and cocounsel to provide legal services in cases  
9 where a person is charged with the multiple offense of murder  
10 in the first degree, kidnapping, and sexual abuse under section  
11 902.15, and the state has given notice of intent to seek the  
12 death penalty or in cases in which a sentence of death is to be  
13 imposed.

14 b. Conduct or sponsor specialized training programs for  
15 attorneys representing persons who may be executed.

16 Sec. 2. NEW SECTION. 602.10112 **Qualifications of counsel**  
17 **in death penalty cases.**

18 The supreme court shall prescribe rules which establish  
19 minimum standards and procedures by which attorneys may become  
20 qualified to provide legal services as lead counsel in cases in  
21 which a sentence of death may be or is to be imposed.

22 Sec. 3. NEW SECTION. 812A.1 **Procedure to determine sanity**  
23 **of condemned inmate.**

24 1. At any time prior to execution of an inmate under section  
25 902.1, if the director of the department of corrections or  
26 the counsel for a person who is under a sentence of execution  
27 has cause to believe that the inmate is suffering from such  
28 a diseased or deranged condition of the mind as to prevent  
29 the defendant from knowing the nature and quality of the act  
30 the defendant has been convicted of, or from understanding  
31 that trial on the offense has taken place and that execution  
32 proceedings are about to take place, or to otherwise cause the  
33 defendant to lack the capacity to understand the sentence which  
34 has been imposed and to participate in any legal proceedings  
35 relating to the sentence, the director or counsel may file a

1 request with the court that issued the warrant for execution  
2 for a determination of the inmate's sanity. If the court  
3 determines that there is not sufficient reason to believe  
4 that the inmate is insane, the court shall enter an order  
5 denying the request and shall state the grounds for denying the  
6 request. If the court believes that there is sufficient reason  
7 to believe that the inmate is insane, the court shall suspend  
8 the execution and conduct a hearing to determine the sanity of  
9 the inmate.

10 2. At the hearing, the court shall determine the issue of  
11 the inmate's sanity. Prior to the hearing, the court shall  
12 appoint two licensed physicians or licensed psychologists, or  
13 one licensed physician and one licensed psychologist, who are  
14 qualified by training and practice, for purposes of conducting  
15 a psychiatric or psychological examination of the inmate. The  
16 physicians or psychologists shall examine the inmate and report  
17 any findings in writing to the court within ten days after  
18 the order of examination is issued. The inmate shall have  
19 the right to present evidence and cross-examine any witnesses  
20 at the hearing. Any statement made by the inmate during the  
21 course of any examination provided for in this section, whether  
22 or not the inmate consents to the examination, shall not be  
23 admitted into evidence against the inmate in any criminal  
24 proceeding for purposes other than a determination of the  
25 inmate's sanity.

26 3. If, at the conclusion of a hearing held pursuant to  
27 this section, the court determines that the inmate is sane,  
28 the court shall enter an order setting a date for the inmate's  
29 execution, which shall be carried into effect in the same  
30 manner as provided in the original sentence. A copy of the  
31 order shall be sent to the director of the department of  
32 corrections and the governor.

33 4. If, at the conclusion of a hearing held pursuant to this  
34 section, the court determines that the inmate is insane, the  
35 court shall suspend the execution until further order. At any

1 time after issuance of the order, if the court has sufficient  
2 reason to believe that the inmate has become sane, the court  
3 shall again determine the sanity of the inmate as provided  
4 by this section. Proceedings pursuant to this section may  
5 continue to be held at such times as the court orders until  
6 it is either determined that the inmate is sane or incurably  
7 insane.

8     Sec. 4. NEW SECTION.   **814.28 Review of death sentence.**

9     1. In a case in which a sentence of death is imposed, the  
10 supreme court shall automatically review the judgment and  
11 sentence. The court's review of the case shall be de novo. The  
12 case shall not be transferred to the court of appeals.

13     2. A review by the supreme court of a judgment and sentence  
14 imposing the punishment of death has priority over all other  
15 criminal and other actions pending before the supreme court.

16     3. The supreme court shall review the trial and judgment,  
17 and shall separately review the sentencing proceeding. Upon  
18 determining that errors did not occur at the trial requiring  
19 reversal or modification of the judgment, the supreme court  
20 shall proceed to determine if the sentence of death is lawfully  
21 imposed. In its review of the sentencing proceeding the  
22 supreme court shall determine all of the following:

23     a. Whether the sentence of death was imposed capriciously or  
24 under the influence of prejudice or other arbitrary factor.

25     b. Whether the special verdicts returned under section  
26 901.11 are supported by the evidence.

27     c. Whether the sentence of death is excessive or  
28 disproportionate to the penalty imposed in similar cases,  
29 considering both the crime and the defendant.

30     4. If the supreme court determines that the sentence of  
31 death was not lawfully imposed, the supreme court shall set  
32 aside the sentence and shall remand the case to the trial  
33 court for a second sentencing proceeding to determine if the  
34 imposition of death is warranted.

35     5. If the supreme court affirms the judgment and sentence

1 of death, the clerk of the supreme court shall certify the  
2 judgment of the supreme court under the seal of the supreme  
3 court to the clerk of the trial court.

4 Sec. 5. Section 815.10, Code 2015, is amended by adding the  
5 following new subsection:

6 NEW SUBSECTION. 1A. If two attorneys have not already  
7 been appointed pursuant to section 13B.4 or 13B.9, the court  
8 shall appoint, for each indigent person who is charged with  
9 the multiple offense of murder, kidnapping, and sexual abuse  
10 under section 902.15, and in which a notice of intent to  
11 seek the death penalty has been filed, two attorneys who are  
12 qualified under section 602.10112 to represent the person in  
13 the proceedings and in all state legal proceedings which take  
14 place from the time the person is indicted or arraigned until  
15 the person is sentenced on the charge. In addition, if at  
16 any point in federal postconviction proceedings an indigent  
17 person is not afforded court-appointed counsel, the state shall  
18 provide counsel to the person to present any claims determined  
19 meritorious by the federal court if the person is not otherwise  
20 represented by legal counsel. Only private attorneys and  
21 public defenders who are qualified to provide representation in  
22 cases in which the death penalty may be imposed are eligible  
23 for appointment or assignment to a case in which the death  
24 penalty may be imposed.

25 Sec. 6. NEW SECTION. 901.11 **Murder proceedings — request**  
26 **for death penalty — penalty proceedings.**

27 1. If a notice of intent to seek the death penalty has  
28 been filed, objections to the imposition of the death penalty  
29 based upon allegations that a defendant was intellectually  
30 disabled or mentally ill at the time of the commission of  
31 the offense shall be raised within the time provided for the  
32 filing of pretrial motions under rule of criminal procedure  
33 2.11, Iowa court rules. The court may, for good cause shown,  
34 allow late filing of the motion. Hearing on the motion shall  
35 be held prior to trial and the burden of proof shall be on the

1 defendant to prove intellectual disability or mental illness  
2 by a preponderance of the evidence. However, a rebuttable  
3 presumption of intellectual disability arises if a defendant  
4 has an intelligence quotient of seventy or below. If the  
5 court finds that the defendant is intellectually disabled, the  
6 defendant, if convicted of the multiple offense of murder,  
7 kidnapping, and sexual abuse under section 902.15, shall not be  
8 sentenced to death but shall be sentenced to life imprisonment  
9 in the manner provided in section 902.1, subsection 1. A  
10 finding by the court that the evidence presented by the  
11 defendant at the hearing does not preclude the imposition of  
12 the death penalty under this section and section 902.15 shall  
13 not preclude the introduction of evidence of intellectual  
14 disability or mental illness during the penalty proceeding.  
15 If the court finds that evidence of intellectual disability  
16 or mental illness does not preclude imposition of the death  
17 penalty, evidence of intellectual disability or mental illness  
18 may be reviewed by the jury in the penalty proceeding and  
19 the jury shall not be informed of the finding in the initial  
20 proceeding at any time during the penalty proceeding.

21 2. If at the trial on a charge of the multiple offense of  
22 murder, kidnapping, and sexual abuse under section 902.15, the  
23 state intends to request that the death penalty be imposed  
24 under section 902.1, subsection 3, the prosecutor shall file a  
25 notice of intent to seek the death penalty, at the time of and  
26 as part of the information or indictment filed in the case.

27 3. If a notice of intent to seek the death penalty has been  
28 filed, the trial shall be conducted in bifurcated proceedings  
29 before the same trier of fact. During the initial proceeding,  
30 the jury, or the court if the defendant waives the right to a  
31 jury trial, shall decide only whether the defendant is guilty  
32 or not guilty of the multiple offense of murder, kidnapping,  
33 and sexual abuse under section 902.15.

34 a. If, in the initial proceeding, the court or jury finds  
35 the defendant guilty of, or the defendant pleads guilty to, an

1 offense other than the multiple offense of murder, kidnapping,  
2 and sexual abuse under section 902.15, the court shall sentence  
3 the defendant in accordance with the sentencing procedures set  
4 forth in rule of criminal procedure 2.23, Iowa court rules, and  
5 chapters 901 through 909, which are applicable to the offense.

6     *b.* If the court or jury finds the defendant guilty of,  
7 or the defendant pleads guilty to, the multiple offense of  
8 murder, kidnapping, and sexual abuse under section 902.15, but  
9 the prosecuting attorney waives the death penalty, the court  
10 shall sentence the defendant to life imprisonment in accordance  
11 with the sentencing procedures set forth in rule of criminal  
12 procedure 2.23, Iowa court rules, and chapters 901 through 909,  
13 which are otherwise applicable to convictions of murder in the  
14 first degree, kidnapping, and sexual abuse.

15     *c.* If the court or jury finds the defendant guilty of the  
16 multiple offense of murder, kidnapping, and sexual abuse under  
17 section 902.15, or a defendant enters a plea of guilty in the  
18 initial proceeding, and the prosecuting attorney does not waive  
19 imposition of the death penalty, a penalty proceeding shall be  
20 held in the manner provided in subsections 4 through 12.

21     4. No sooner than twenty-four hours after a verdict of  
22 guilty or a plea of guilty to the multiple offense of murder,  
23 kidnapping, and sexual abuse under section 902.15 is returned  
24 in the initial proceeding, a penalty proceeding shall be held  
25 to determine whether the defendant shall be sentenced to death  
26 or to life imprisonment. The proceeding shall be conducted  
27 in the trial court before the trial jury, or the court if the  
28 defendant has waived the right to a jury trial or has waived  
29 the right for the proceeding to be before the trial jury. Both  
30 the state and the defendant shall have the right to present  
31 opening statements at the commencement of the proceeding. In  
32 the proceeding, evidence relevant to the existence of any  
33 aggravating or mitigating circumstances may be presented as  
34 follows:

35     *a.* The state or the defendant may present evidence relevant

1 to the conviction of the multiple offense enumerated in section  
2 902.15 and any aggravating circumstances other than juvenile  
3 delinquency adjudications for offenses which carry penalties  
4 equivalent to the penalties imposed for simple or serious  
5 misdemeanors. The state may introduce evidence of the actual  
6 harm caused by the commission of the multiple offense of  
7 murder, kidnapping, and sexual abuse under section 902.15,  
8 including but not limited to evidence relating to the life of  
9 the victim and the impact of the loss of the victim to the  
10 victim's family and society.

11     *b.* The defendant may present evidence that the defendant  
12 was intellectually disabled at the time of the commission of  
13 the offense. The burden of proof shall be on the defendant  
14 to prove intellectual disability by a preponderance of the  
15 evidence. However, a rebuttable presumption of intellectual  
16 disability arises if a defendant has an intelligence quotient  
17 of seventy or below.

18     *c.* The state or the defendant may present evidence relevant  
19 to any mitigating circumstances which may exist. Mitigating  
20 circumstances may include the following circumstances:

21         (1) The defendant was under the influence of an extreme  
22 mental or emotional disturbance insufficient to constitute a  
23 defense.

24         (2) The age of the defendant at the time of the offense.

25         (3) The defendant's capacity to appreciate the wrongfulness  
26 of the defendant's conduct and to conform that conduct to the  
27 requirements of law was significantly impaired as a result of a  
28 mental disease or defect or intellectual disability, but not to  
29 a degree sufficient to constitute a defense.

30         (4) The defendant has no significant history of prior adult  
31 criminal activity.

32         (5) The defendant acted under extreme duress or under the  
33 substantial domination of another person.

34         (6) The defendant did not directly commit the multiple  
35 offense of murder, kidnapping, and sexual abuse and the



1 defendant did not intend to kill or anticipate that lethal  
2 force would be used.

3 (7) Any other factor which is relevant to the defendant's  
4 character or record or to the circumstances of the offense.

5 d. The state and the defendant or the defendant's counsel  
6 shall be permitted to present and cross-examine witnesses and  
7 present arguments for or against a sentence of death. Evidence  
8 regarding aggravating and mitigating circumstances shall not  
9 be governed by the rules governing admissibility of evidence,  
10 except that introduction of evidence secured in violation of  
11 the Constitution of the United States or of the Constitution of  
12 the State of Iowa shall not be permitted.

13 5. At the conclusion of presentation of evidence in  
14 the penalty proceeding, the state and the defendant or the  
15 defendant's counsel shall be permitted to make closing  
16 arguments, including any rebuttal arguments, in the same manner  
17 as in the initial proceeding and the following issues shall be  
18 determined by the jury or the court if there is no jury:

19 a. Whether the aggravating circumstance or circumstances  
20 have been established beyond a reasonable doubt and outweigh  
21 any one or more mitigating circumstances.

22 b. Whether the defendant shall be sentenced to death.

23 6. A recommendation for a sentence of death shall not be  
24 permitted if the recommendation is based on the race, color,  
25 religious beliefs, national origin, or sex of the defendant  
26 or of any victim, or based on any other protected class under  
27 chapter 216. After submission of the issues, but prior to the  
28 return of a finding in the penalty proceeding, if the matter is  
29 tried before a jury, the court shall instruct the jury that in  
30 considering whether a sentence of death is justified, it shall  
31 not consider race, color, religious beliefs, national origin,  
32 or sex of the defendant or of any victim, or consider any other  
33 protected class under chapter 216. The court shall further  
34 instruct the jury that it shall not return a sentence of death  
35 unless it concludes that such a sentence would be recommended

1 no matter what the race, color, religious beliefs, national  
2 origin, sex, or other protected class of the defendant or of  
3 any victim may be.

4 7. After submission of the issues, but prior to the  
5 commencement of the jury deliberations in the penalty  
6 proceeding, the court shall instruct the jury that if the  
7 defendant is not sentenced to death, the court is required by  
8 law to impose a sentence of imprisonment until death without  
9 parole. The court shall further instruct the jury that  
10 the sentence of imprisonment until death without parole is  
11 required by law if the jury fails to reach a unanimous verdict  
12 recommending a sentence of death.

13 8. Concurrently with the return of the findings on the  
14 issues submitted under subsection 5, the jury, or the court if  
15 there is no jury, shall return special verdicts as follows:

16 a. Which aggravating circumstances were established beyond a  
17 reasonable doubt and were considered in reaching the verdict.

18 b. Which mitigating circumstances were established and  
19 were considered in reaching the verdict returned on the issue  
20 specified in subsection 5, paragraph "a".

21 9. If the jury, or the court if there is no jury, returns a  
22 unanimous affirmative finding on each of the issues submitted  
23 under subsection 5, paragraphs "a" and "b", the court shall  
24 enter a judgment of conviction and shall sentence the defendant  
25 to death as provided in section 902.1, subsection 3.

26 10. However, if evidence that the defendant was not a  
27 major participant in the commission of the multiple offense  
28 of murder, kidnapping, and sexual abuse under section 902.15,  
29 and that the defendant's conduct did not manifest a reckless  
30 indifference to human life is presented to the jury, or the  
31 court if there is no jury, the jury or the court shall also  
32 return a special verdict on the issue. If the jury unanimously  
33 determines, or the court if there is no jury, finds that a  
34 preponderance of evidence exists that shows that the defendant  
35 was not a major participant in the commission of the multiple

1 offense of murder, kidnapping, and sexual abuse under section  
2 902.15, and that the defendant's conduct did not manifest a  
3 reckless indifference to human life, the court shall enter a  
4 judgment of conviction and shall sentence the defendant to life  
5 imprisonment as provided in section 902.1, subsection 1, even  
6 if the jury or the court returns unanimous affirmative findings  
7 on each of the issues submitted under subsection 5.

8 11. If the jury, or the court if there is no jury, returns  
9 a negative finding on any of the issues submitted under  
10 subsection 5, paragraphs "a" or "b", the court shall enter a  
11 judgment of conviction and shall sentence the defendant to life  
12 imprisonment as provided in section 902.1, subsection 1.

13 12. After a verdict has been rendered it shall be recorded  
14 on the jury verdict form and shall be read and recorded in open  
15 court. The jurors shall be collectively asked by the court  
16 whether the verdict returned is their true and correct verdict.  
17 Even though no juror makes any declaration to the contrary, the  
18 jury shall, if either party so requests, be polled and each  
19 juror shall be separately asked whether the verdict rendered by  
20 the jury foreperson is the juror's true and correct verdict.  
21 If, upon either the collective or the separate inquiry, any  
22 juror denies that the verdict is the juror's verdict, the court  
23 shall refuse to accept the verdict. The court may direct  
24 inquiry or permit inquiry by counsel to ascertain whether any  
25 juror has been subjected to coercion or has become confused  
26 during the jury deliberation process. The court may, as  
27 appropriate, direct the jury to resume deliberation in the  
28 case. If no disagreement on the verdict is expressed by any of  
29 the jurors, the court shall discharge the jury.

30 Sec. 7. Section 902.1, subsection 1, Code 2015, is amended  
31 to read as follows:

32 1. ~~Upon~~ Except as otherwise provided in subsection 2 or  
33 3, upon a plea of guilty, a verdict of guilty, or a special  
34 verdict upon which a judgment of conviction of a class "A"  
35 felony may be rendered, the court shall enter a judgment of

1 conviction and shall commit the defendant into the custody of  
2 the director of the Iowa department of corrections for the  
3 rest of the defendant's life. Nothing in the Iowa corrections  
4 code pertaining to deferred judgment, deferred sentence,  
5 suspended sentence, or reconsideration of sentence applies  
6 to a sentence of life imprisonment for a class "A" felony,  
7 and a person convicted of a class "A" felony and sentenced to  
8 life imprisonment shall not be released on parole unless the  
9 governor commutes the sentence to a term of years.

10 Sec. 8. Section 902.1, Code 2015, is amended by adding the  
11 following new subsection:

12 NEW SUBSECTION. 3. Notwithstanding subsection 1, upon  
13 return of a plea or verdict of guilty to the multiple offense  
14 of murder in the first degree, kidnapping, and sexual abuse  
15 under section 902.15, and a return of a verdict in favor of  
16 a sentence of death in a penalty proceeding conducted as  
17 provided in section 901.11, the court shall enter a judgment  
18 of conviction and shall commit the defendant into the custody  
19 of the director of the Iowa department of corrections. The  
20 sentence shall be carried out by the administration of a  
21 lethal injection pursuant to rules adopted by the board of  
22 corrections. If a defendant, for whom a warrant of execution  
23 is issued, is pregnant, the execution shall not take place  
24 until after the defendant is no longer pregnant. If a  
25 defendant, for whom a warrant of execution is issued, is  
26 suffering from such a diseased or deranged condition of the  
27 mind as to prevent the defendant from knowing the nature  
28 and quality of the act the defendant has been convicted  
29 of, or from understanding that trial on the offense has  
30 taken place and that execution proceedings are about to take  
31 place, or otherwise causes the defendant to lack the capacity  
32 to understand the sentence which has been imposed and to  
33 participate in any legal proceedings relating to the sentence,  
34 the execution shall not take place until after the defendant's  
35 capacity is restored. If the director of the department of

1 corrections or the defendant's counsel files a request with the  
 2 court which issued the warrant of execution, alleging that the  
 3 defendant suffers from such a diseased or deranged condition,  
 4 a hearing on the matter shall be held in the manner provided  
 5 in section 812A.1. For the purposes of this section, "*lethal*  
 6 *injection*" means a continuous intravenous injection of a lethal  
 7 substance sufficient to cause death.

8     Sec. 9. NEW SECTION. **902.15 Commission of the multiple**  
 9 **offense of first degree murder, kidnapping, and sexual abuse.**

10     A person who commits the multiple offense of murder in the  
 11 first degree, kidnapping, and sexual abuse with respect to the  
 12 same victim, who is not intellectually disabled or mentally  
 13 ill, and who is age eighteen or older at the time the offense  
 14 is committed, shall be eligible for a sentence of death under  
 15 section 902.1, subsection 3, if the victim was a minor.

16     For purposes of this section, "*intellectually disabled*"  
 17 means significant subaverage general intellectual functioning  
 18 accompanied by significant deficits or impairments in adaptive  
 19 functioning manifested in the developmental period, but no  
 20 later than the age of eighteen years, and accompanied by  
 21 deficits in adaptive behavior.

22     For purposes of this section, "*mentally ill*" means the  
 23 condition of a person who is suffering from a chronic and  
 24 persistent serious mental disease or disorder and who, by  
 25 reason of that condition, lacks sufficient judgment to make  
 26 responsible decisions regarding treatment and is reasonably  
 27 likely to injure the person's self or others who may come into  
 28 contact with the person if the person is allowed to remain at  
 29 liberty without treatment.

30     Sec. 10. NEW SECTION. **902.16 Data collection for death**  
 31 **penalty.**

32     1. The supreme court shall collect data on all multiple  
 33 offenses of murder, kidnapping, and sexual abuse charges in  
 34 which the death penalty is or was not waived, which are filed  
 35 and processed in the courts in this state. This data may be

1 used by the supreme court to determine whether death sentences  
 2 imposed are excessive or disproportionate, or under the  
 3 influence of prejudice under section 814.28. The court shall  
 4 make this data available to litigants in death penalty cases.

5 2. Data collected by public officials concerning factors  
 6 relevant to the imposition of the death sentence shall be made  
 7 publicly available.

8 Sec. 11. NEW SECTION. 903C.1 Executions — refusal to  
 9 perform.

10 An employee of the state who may lawfully perform, assist, or  
 11 participate in the execution of a person pursuant to section  
 12 902.1, and rules adopted by the department of corrections,  
 13 shall not be required to perform, assist, or participate in  
 14 the execution. State employees who refuse to perform, assist,  
 15 or participate in the execution of a person shall not be  
 16 discriminated against in any way, including but not limited  
 17 to employment, promotion, advancement, transfer, licensing,  
 18 education, training, or the granting of any privileges or  
 19 appointments because of the refusal to perform, assist, or  
 20 participate in the execution.

21 Sec. 12. Section 904.105, Code 2015, is amended by adding  
 22 the following new subsection:

23 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A  
 24 pertaining to executions of persons convicted of the multiple  
 25 offense of murder, kidnapping, and sexual abuse under section  
 26 902.15. Rules adopted shall include but are not limited to  
 27 rules permitting the witnessing of executions by members of  
 28 the public and the victim's family. Invitations to witness  
 29 an execution shall at least be extended to the following  
 30 representatives of the news media:

31 a. A representative from a wire service serving Iowa.

32 b. A representative from a broadcasting network serving  
 33 Iowa.

34 c. A representative from a television station located in  
 35 Iowa.

1     *d.* A representative from a radio station located in Iowa.

2     *e.* A representative from a daily newspaper published in  
3 Iowa.

4     *f.* A representative from a weekly newspaper published in  
5 Iowa.

6     *g.* A representative from the news media from the community  
7 in which the condemned person resided, if that community is  
8 located in Iowa.

9     Sec. 13.

10    Rules of criminal procedure, Iowa court rules, are amended  
11 by adding the following four sections of this Act.

12    Sec. 14.   **2.\_\_\_\_ DEATH PENALTY – PROCEDURE.**

13    **2.\_\_\_\_(1)** If a notice of intent to seek the death penalty has  
14 been filed, objections to the imposition of the death penalty  
15 based upon allegations that a defendant was intellectually  
16 disabled at the time of the commission of the multiple offense  
17 shall be raised within the time provided for the filing of  
18 pretrial motions under R.Cr.P. 2.11, Iowa court rules. The  
19 court may, for good cause shown, allow late filing of the  
20 motion. Hearing on the motion shall be held prior to trial  
21 and the burden of proof shall be on the defendant to prove  
22 intellectual disability by a preponderance of the evidence.  
23 However, a rebuttable presumption of intellectual disability  
24 arises if a defendant has an intelligence quotient of seventy  
25 or below. A finding of the court that the evidence presented  
26 by the defendant at the hearing does not preclude the  
27 imposition of the death penalty under this rule and Iowa Code  
28 section 902.15 shall not preclude the introduction of evidence  
29 of intellectual disability during the penalty proceeding. If  
30 the court finds that the evidence presented by the defendant  
31 does not preclude the imposition of the death penalty, evidence  
32 of intellectual disability may be reviewed by the jury during  
33 the penalty proceeding and the jury shall not be informed of  
34 the finding in the initial proceeding at any time during the  
35 penalty proceeding.

1     2.\_\_(2) Upon a finding or plea that a defendant is guilty  
2 of the multiple offense of murder, kidnapping, and sexual abuse  
3 under Iowa Code section 902.15, in an initial proceeding, if  
4 a notice of intent to seek the death penalty has been filed  
5 and has not been waived, the court shall conduct a separate  
6 penalty proceeding to determine whether the defendant shall  
7 be sentenced to death or to life imprisonment. The penalty  
8 proceeding shall be conducted in the trial court before the  
9 trial jury, or the court if there is no jury, no sooner than  
10 twenty-four hours after the return of the verdict or plea in  
11 the initial proceeding. In the penalty proceeding, additional  
12 evidence may be presented as to the conviction for the multiple  
13 offense of murder, kidnapping, and sexual abuse under section  
14 902.15, or any aggravating or mitigating circumstance which  
15 may exist. Presentation of evidence which is relevant to  
16 the existence of an aggravating or mitigating circumstance  
17 shall not be bound by the rules of evidence. This subrule  
18 does not authorize the introduction of any evidence secured in  
19 violation of the Constitution of the United States or of the  
20 Constitution of the State of Iowa. The state and the defendant  
21 or the defendant's counsel shall be permitted to cross-examine  
22 witnesses and to present arguments for or against a sentence of  
23 death.

24     2.\_\_(3) On conclusion of the presentation of the evidence  
25 in the penalty proceeding, the state and the defendant or  
26 the defendant's counsel shall be permitted to make closing  
27 arguments, including any rebuttal arguments, in the same manner  
28 as in the initial proceeding and the court shall submit each of  
29 the following issues to the jury:

30     a. Whether one or more aggravating circumstances outweigh  
31 any one or more mitigating circumstances.

32     b. Whether the defendant shall be sentenced to death.

33     If the case is not tried to a jury, the court shall determine  
34 the issues.

35     2.\_\_(4) The state must prove the issue in rule 2.\_\_(3)(a)



1 beyond a reasonable doubt, and the jury, or the court if there  
2 is no jury, shall return a special verdict of "yes" or "no" on  
3 each issue.

4 2.\_\_(5) If the case is tried to a jury, the court shall  
5 charge the jury that:

6 a. It shall answer any issue "yes" if it agrees unanimously.

7 b. It shall answer any issue "no" if the jurors unanimously  
8 agree that the answer is "no" or if the jurors do not  
9 unanimously agree that the answer is "yes".

10 2.\_\_(6) Concurrently with the return of the special  
11 verdicts under rule 2.\_\_(3), the jury, or the court if there  
12 is no jury, shall also return special verdicts as follows:

13 a. Which aggravating circumstances were established beyond  
14 a reasonable doubt and were considered in reaching the verdict  
15 returned on the issue specified in rule 2.\_\_(3)(a).

16 b. Which mitigating circumstances were established and  
17 were considered in reaching the verdict returned on the issue  
18 specified in rule 2.\_\_(3)(a).

19 2.\_\_(7) If the jury, or the court if there is no jury,  
20 returns an affirmative finding on all applicable issues, the  
21 court shall sentence the defendant to death. If the jury or  
22 the court returns a negative finding on any applicable issue,  
23 the court shall sentence the defendant to the custody of the  
24 director of the department of corrections for confinement for  
25 the rest of the defendant's life.

26 2.\_\_(8) After a verdict has been rendered it shall be  
27 recorded on the jury verdict form and shall be read and  
28 recorded in open court. The jurors shall be collectively asked  
29 by the court whether the verdict returned is their true and  
30 correct verdict. Even though no juror makes any declaration  
31 to the contrary, the jury shall, if either party so requests,  
32 be polled and each juror shall be separately asked whether the  
33 verdict rendered by the jury foreperson is the juror's true  
34 and correct verdict. If, upon either the collective or the  
35 separate inquiry, any juror denies that the verdict is the

1 juror's verdict, the court shall refuse to accept the verdict.  
 2 The court may direct inquiry or permit inquiry by counsel to  
 3 ascertain whether any juror has been subjected to coercion  
 4 or has become confused during the jury deliberation process.  
 5 The court may, as appropriate, direct the jury to resume  
 6 deliberation in the case. If no disagreement on the verdict  
 7 is expressed by any of the jurors, the court shall discharge  
 8 the jury.

9     **2.\_\_(9)** Provisions relating to deferred judgment, deferred  
 10 sentence, suspended sentence, reconsideration of sentence,  
 11 probation, parole, or work release contained in Iowa Code  
 12 chapters 901 through 909 do not apply to a conviction of the  
 13 multiple offense of murder, kidnapping, and sexual abuse under  
 14 Iowa Code section 902.15 if the defendant is sentenced to  
 15 death.

16     **Sec. 15. 2.\_\_(9) AUTOMATIC REVIEW - STAY OF EXECUTION OF**  
 17 **JUDGMENT.**

18     **2.\_\_(1)** A judgment of conviction and sentence of death  
 19 shall be reviewed automatically in the manner provided in Iowa  
 20 Code section 814.28, and the Iowa supreme court has exclusive  
 21 jurisdiction of the review.

22     **2.\_\_(2)** Upon entry of judgment and sentence of death, the  
 23 trial court shall prepare a complete record and transcript of  
 24 the action in the manner provided in the rules of criminal  
 25 procedure and shall docket the record and transcript with the  
 26 clerk of the supreme court.

27     **2.\_\_(3)** The execution of judgment of the trial court is  
 28 stayed as a matter of law from the time of its entry until  
 29 the judgment of the supreme court is certified to and entered  
 30 by the trial court. Upon entry of a judgment of the supreme  
 31 court which affirms the conviction and sentence, the stay of  
 32 execution of judgment terminates as a matter of law.

33     **2.\_\_(4)** All court costs required due to the automatic  
 34 preparation of the record and transcript, docketing with the  
 35 supreme court, and stay of execution of judgment shall be

1 assessed to the state.

2     Sec. 16. 2.\_\_\_\_ ISSUANCE OF WARRANT.

3     2.\_\_\_\_(1) Upon entry by the trial court of the judgment of  
 4 the supreme court affirming a judgment and sentence of death,  
 5 a district judge shall within five days of the entry issue  
 6 a warrant under the seal of the court for the execution of  
 7 the sentence of death. The warrant shall specifically set  
 8 forth the offense and the fact of conviction, shall state  
 9 the judgment and sentence of the court, shall state that the  
 10 judgment and sentence were affirmed by the supreme court and  
 11 the date of entry of judgment of the supreme court in the  
 12 trial court, and shall, subject to the requirements of Iowa  
 13 Code section 902.1, subsection 3, specify a range of five days  
 14 for execution of the defendant which shall be not less than  
 15 fifty nor more than sixty days after the date of entry in the  
 16 trial court of the judgment of the supreme court affirming the  
 17 judgment and sentence of death. The warrant shall be directed  
 18 to the director of the department of corrections commanding  
 19 the director to cause the warrant to be executed within the  
 20 dates specified. The trial court shall deliver the warrant  
 21 to the sheriff of the county in which judgment of conviction  
 22 was entered and the sheriff shall deliver the warrant to the  
 23 director of the department of corrections. The director of  
 24 the department of corrections shall acknowledge receipt of the  
 25 warrant and the defendant, and the sheriff shall return the  
 26 acknowledgment to the office of the clerk of the trial court  
 27 from which the warrant was issued.

28     2.\_\_\_\_(2) Immediately after issuance of a warrant ordering  
 29 a sentence of death, the clerk of the trial court issuing the  
 30 warrant shall transmit by certified mail to the governor a copy  
 31 of the indictment, the plea, the verdict and special findings,  
 32 the affirmation of judgment and sentence by the supreme court,  
 33 and the complete transcript of the trial court.

34     2.\_\_\_\_(3) Notwithstanding rule 2.\_\_\_\_(1), if a defendant,  
 35 for whom a warrant of execution is issued, is pregnant, the

1 execution shall not take place until after the defendant  
 2 is no longer pregnant. Notwithstanding rule 2.\_\_(1), if  
 3 a defendant, for whom a warrant of execution is issued, is  
 4 suffering from such a diseased or deranged condition of the  
 5 mind as to prevent the defendant from knowing the nature  
 6 and quality of the act the defendant has been convicted of,  
 7 or from understanding that trial on the offense has taken  
 8 place and that execution proceedings are about to take place,  
 9 or to otherwise cause the defendant to lack the capacity  
 10 to understand the sentence which has been imposed and to  
 11 participate in any legal proceedings relating to the sentence,  
 12 the execution shall not take place until after the defendant is  
 13 no longer suffering from the condition.

14     Sec. 17. 2.\_\_\_\_ EVIDENCE AT PENALTY PROCEEDING WHERE DEATH  
 15 SENTENCE REQUESTED.

16     2.\_\_(1) At a reasonable time before the commencement of  
 17 initial proceedings in a murder, kidnapping, and sexual abuse  
 18 trial in which a sentence of death has been requested, each  
 19 party shall file and serve upon the other party the following:

20     a. A list of all aggravating or mitigating circumstances  
 21 which the party intends to prove during the sentencing  
 22 proceedings.

23     b. The names of all persons whom the party intends to call  
 24 as witnesses during the sentencing proceedings.

25     c. Notwithstanding rule 2.14, copies, or for inspection  
 26 purposes, the location, of all documents, including books,  
 27 papers, writings, drawings, graphs, charts, photographs,  
 28 telephone records, and other data compilations from which  
 29 information can be obtained, or other objects which the  
 30 party intends to offer into evidence during the sentencing  
 31 proceedings. If copies are not supplied to opposing counsel,  
 32 the party shall make the items available for inspection and  
 33 copying without order of the court.

34     2.\_\_(2) In proceedings to determine whether the sentence  
 35 shall be death or life imprisonment, evidence may be presented

1 as to any matter which the trial court deems relevant to  
 2 the sentence, including but not limited to the nature,  
 3 circumstances, and manner of completion of the murder,  
 4 kidnapping, and sexual abuse, and the defendant's character,  
 5 background, history, and mental and physical condition. The  
 6 trial court shall admit any relevant admissible evidence  
 7 respecting any aggravating or mitigating circumstances, if the  
 8 party has included the circumstance on a list provided pursuant  
 9 to this rule, or good cause is shown for the failure to do so.

10 Sec. 18. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
 11 3, shall not apply to this Act.

12 Sec. 19. SEVERABILITY. If any provision of this Act or the  
 13 application thereof to any person is invalid, the invalidity  
 14 shall not affect the provisions or application of this Act  
 15 which can be given effect without the invalid provisions or  
 16 application and to this end, the provisions of this Act are  
 17 severable.

18 Sec. 20. EFFECTIVE DATE. This Act takes effect January 1,  
 19 2016.

20 Sec. 21. APPLICABILITY. This Act applies to offenses  
 21 committed on or after the effective date of this Act.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with  
 24 the explanation's substance by the members of the general assembly.

25 This bill further provides that in order to receive a  
 26 sentence of death, the defendant must be at least 18 years of  
 27 age at the time the offense is committed, must not be mentally  
 28 ill or intellectually disabled, and must have been a major  
 29 participant in the commission of the crime or must have shown a  
 30 manifest indifference to human life.

31 The bill amends the Iowa criminal code to provide for  
 32 punishment by death for the multiple offense of murder in the  
 33 first degree, kidnapping, and sexual abuse committed by a  
 34 person age 18 or older with respect to the same victim who is a  
 35 minor if the trial jury, or the judge if there is no jury, makes

1 specific findings and whether the jury believes the defendant  
2 should be put to death in a separate penalty proceeding held  
3 after the close of the initial trial proceeding. Under the  
4 bill, a death sentence could be imposed if the murder would  
5 constitute murder in the first degree and the state pleads and  
6 proves the defendant also kidnapped and committed sexual abuse  
7 against the murder victim who was a minor.

8 If a person is indigent and is charged with capital murder,  
9 payment of costs for two attorneys is authorized. The supreme  
10 court is required to establish standards for the competency of  
11 counsel in death penalty cases. The state public defender is  
12 charged with establishing teams of qualified lead and cocounsel  
13 for death penalty cases, as well as conducting or sponsoring  
14 specialized training programs for attorneys representing  
15 persons who may be executed.

16 If such a case proceeds to trial and a notice of intent to  
17 seek the death penalty has been filed, in addition to any other  
18 defenses which may be presented to the charge, the defendant  
19 may raise the issue of intellectual disability during the time  
20 of filing pretrial motions, and the defendant is entitled to  
21 a rebuttable presumption of intellectual disability if the  
22 defendant establishes that the defendant has an intelligence  
23 quotient of 70 or below.

24 Once the evidence is submitted to the jury, the court  
25 will instruct the jury, at the defendant's request, that in  
26 considering whether a sentence of death is justified, the  
27 race, color, religious beliefs, national origin, sex, or other  
28 protected classes under Code chapter 216 of the defendant or  
29 of any victim is not to be considered. The supreme court  
30 shall collect evidence relating to whether the death sentences  
31 imposed are excessive, disproportionate, or imposed under the  
32 influence of prejudice at trial which will be available to  
33 litigants.

34 The sentence of death is imposed only when the trier of fact  
35 (the jury or the court if the defendant has waived the right to

1 a jury trial) unanimously answers two questions affirmatively:  
2 (1) whether aggravating circumstances established beyond a  
3 reasonable doubt outweigh any mitigating circumstances that  
4 may exist; and (2) whether the defendant should be sentenced  
5 to death. Mitigating factors the trier of fact may consider  
6 include the following: the defendant was under the influence  
7 of an extreme mental or emotional disturbance; the age of  
8 the defendant; the defendant's ability to appreciate the  
9 wrongfulness of the conduct due to mental disease but not  
10 to a degree to constitute a defense; the defendant has no  
11 significant prior criminal history; the defendant was under  
12 extreme duress; the defendant did not directly commit the  
13 murder, kidnapping, and sexual abuse; and the defendant's  
14 character or record or the circumstances of the offense. The  
15 sentencing proceeding is conducted separately from the finding  
16 of guilt or innocence by the same trier of fact.

17 For the sentencing proceeding, the trier of fact (the jury  
18 or the court if the defendant has waived the right to have  
19 the jury hear the proceedings) is to weigh any aggravating  
20 circumstances established beyond a reasonable doubt by the  
21 state against any of the enumerated mitigating circumstances  
22 which may be presented by the defendant. Evidence of certain  
23 juvenile delinquency adjudications is not admissible in any  
24 proceeding to determine the sentence. If the jury fails to  
25 agree unanimously on the required affirmative findings, the  
26 penalty imposed would be life imprisonment.

27 The death penalty sentence would be reviewed automatically  
28 by the supreme court. The supreme court shall review the trial  
29 and judgment separately from the sentencing proceeding. If the  
30 supreme court finds error in the sentencing proceeding, the  
31 supreme court may remand the case back to district court for a  
32 new sentencing hearing. The bill requires the supreme court to  
33 examine whether the sentence is excessive or disproportionate  
34 to penalties in similar cases. If affirmed by the supreme  
35 court, the penalty would be accomplished by lethal injection.

1 The bill requires the board of corrections to adopt rules  
2 pertaining to executions, including rules pertaining to the  
3 witnessing of executions.

4 A person who is sentenced to death, but who is pregnant when  
5 the warrant of execution is issued, is not to be executed until  
6 the person is no longer pregnant. A procedure is also provided  
7 to stay execution of a condemned inmate who becomes insane  
8 after conviction but before execution.

9 An employee of the state shall not be required to perform or  
10 assist in any execution and shall not be discriminated against  
11 for refusing to participate.

12 The bill may include a state mandate as defined in Code  
13 section 25B.3. The bill makes inapplicable Code section 25B.2,  
14 subsection 3, which would relieve a political subdivision from  
15 complying with a state mandate if funding for the cost of  
16 the state mandate is not provided or specified. Therefore,  
17 political subdivisions are required to comply with any state  
18 mandate included in the bill.

19 The bill contains severability provisions and takes effect  
20 January 1, 2016, and applies only to applicable offenses  
21 committed on or after that date.